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Jim Zolnierek, NOI Manager
Illinois Commerce Commission
Jim.Zolnierek@illinois.gov

Submitted via email due to COVID-19 constraints impacting hardcopy submission

Re: Comments of Equity Legal Services, the Metropolitan St. Louis Equal Housing and Opportunity Council, Natural Resources Defense Council and Earthjustice on Service Equity in Response to 20-NOI-01

To Whom It May Concern,

These comments are submitted on behalf of Equity Legal Services, the Metropolitan St. Louis Equal Housing and Opportunity Council, Natural Resources Defense Council and Earthjustice, with our thanks to the Illinois Commerce Commission (“ICC”) for its Notice of Inquiry into critical issues of utility equity (20-NOI-01 or “NOI”). Our organizations work in partnership with residents of Centreville, Illinois, to address the many water issues plaguing this Metro East community.

While the NOI is focused primarily on issues of affordability of rates, we believe that affordability is inseparable from equity and nondiscrimination in service delivery.¹ We therefore focus our comments in response to Section D, “Information Collection and Reporting,” in particular on information that goes to “the ability of customers to receive essential levels of utility services... .”² As set forth below, we raise concern that some customers served by regulated water utilities may not receive the same level of service as others and propose ways that the ICC may ensure more equitable, nondiscriminatory service delivery consistent with the duties set forth in the Illinois Public Utilities Act. Specifically, we request that the ICC:

- require enhanced reporting on the condition of and plans for investment in systems’ distributed water infrastructure, and
- develop methods for assessing this data and other measures that go to equity and nondiscrimination in service delivery.

Regulated Utilities have Duties of Equity and Nondiscrimination. The Illinois Public Utilities Act (“Act”) requires that regulated utilities adhere to duties of equity and nondiscrimination, including in their rate practices and their provision of services. For instance, the duty of equity contained in Section 1 of the Act and cited in the NOI extends not only to rates, but broadly to

¹ We are aware that colleagues from NRDC, the Metropolitan Planning Council and Elevate Energy are submitting separate comments focused on affordability and state our support for those comments as well.

² See NOI at p9.

the “fair treatment of consumers and investors in order that (a) the public health, safety and welfare be protected... .”³ Section 8 of the Act, in turn, lays out the following:

Duties of public utilities; nondiscrimination. A public utility shall furnish, provide, and maintain such service instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and public and as shall be in all respects adequate, efficient, just, and reasonable.

A public utility shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay.⁴

These express duties provide the authority for the ICC to adopt additional requirements that will enable the Commission to better ensure equitable and nondiscriminatory service provision.

Transmission/Distribution/Collection Systems and Service Equity. As utilities move to address the dire state of our country’s water infrastructure, it is critical now more than ever that they abide by their duties of equity and nondiscrimination to ensure that some communities are not left even further behind and instead enjoy equitable service delivery. There is little controversy that water transmission, distribution and collection systems built in the 20th century are, in many parts of the country and the state, in grave disrepair. Nor is it disputed that some communities’ pipes, pumps and other distributed water infrastructure are in much worse state than others’. Ensuring that this distributed water infrastructure is equitably repaired, replaced and/or further built out so that all residents receive adequate levels of essential services in a nondiscriminatory manner is the duty of both the ICC and the utilities that it regulates.

Investment in a water utility’s transmission, distribution and/or collection system poses a significant risk of producing differences in service delivery that may be inequitable or discriminatory. The pipes and other infrastructure carrying water to and from homes in a water system often stretch across broad and varied geographies and communities. This “distributed” infrastructure may reflect patterns of racial and economic segregation and varying levels of past investment like that seen in housing and other infrastructure. Moreover, traditional cost-benefit analyses for water infrastructure investments notoriously have left Black and other communities of color out, further perpetuating and at times worsening these historic discriminatory patterns.⁵ Given the high potential for inequitable or discriminatory service delivery due to variations in the condition of distributed infrastructure among communities, we strongly encourage the ICC to require additional measures to ensure equitable and nondiscriminatory delivery of essential water services, as set forth below.

³ NOI at 1 (citing 220 ILCS 5/101-102(d)(viii)); 220 ILCS 5/101-2(d)(i).

⁴ 220 ILCS 5/8-101.

⁵ See Ex. 1, Flavelle, Christopher. “A Climate Plan in Texas Focuses on Minorities. Not Everyone Likes It.” New York Times, 24 July 2020, available at <https://www.nytimes.com/2020/07/24/climate/houston-flooding-race.html>.

Drinking Water Service in Centreville, Illinois. One community that has already been left behind by its several water utilities and is at risk of falling even further behind is Centreville, Illinois. This over 95% Black and extremely low-income community with a median household income of under \$18,000 per year has struggled for decades with water issues that have decimated the homes, livelihoods and health and well-being of the residents who have opted to stay in the closely-knit and safe community they call home, while driving out others. Among the water issues faced by Centreville residents – many of whom get their drinking water service from the Illinois-American Water Company (“IAW”) as part of its Interurban System⁶ – are drinking water service disruptions and concerns with drinking water quality.

The Interurban District provides drinking water to portions of St. Clair, Madison and Monroe Counties in the East St. Louis Metro area. While investigating drinking water issues for residents of Centreville, our team received information from the Illinois Environmental Protection Agency (“Illinois EPA”) that IAW’s water system serving Centreville (consisting of a wedge-shaped area of approximately 1.3 square miles) had experienced 16 water main breaks from 2018 to 2019.⁷ While residents have reported some instances of water main work in Centreville, we are not aware of any announced plans by IAW to comprehensively replace or otherwise repair the deficient mains serving Centreville.

Investments in Other Interurban District Communities. In contrast, our internet research identified IAW announcements of significant investments to replace water mains in other communities within the Interurban System over the past several years, as follows:

- In September 2015, IAW announced plans to spend \$3.1 million to install “over six miles” of water mains in the Interurban System.⁸ Additional detail on the work provided in the news coverage describes work in Belleville and Swansea, communities that are both over 80% white with median household incomes of \$35,000 and nearly \$50,000 per year, respectively: “2.4 miles of water main to be replaced within the Villa Hills subdivision in Belleville. Another approximately 2.1 miles will be installed on Old Caseyville Avenue Swansea from Morgan Street to N. Belt West, 15th Street from Morgan Street to N. Belt West and 16th Street from Morgan Street to N. Belt West. Cross Streets being replaced include Karin Drive, Belle Street, Anna Rose, Jay Ave and Comer Avenue in Swansea, Ill. Other projects planned in Belleville include: - South 51st Street in Belleville – over 4,300 feet of 2-inch water main will replaced with 6-inch water main

⁶ It appears that IAW is the drinking water utility for the portion of Centreville between Lake Drive and State Street, and from the border with East St. Louis to the west to Route 157.

⁷ Telephone call, Chris Pressnall, Environmental Justice Officer, Illinois EPA; Nicole Nelson, Executive Director, Equity Legal Service; and Meleah Geertsma, Senior Attorney, Natural Resources Defense Council, October 1, 2019 (during which Mr. Pressnall described materials provided to Illinois EPA by IAW consisting of a water main break count and marked up map for the area between Frank Holten State Park and State Street to the South and North, and from 55th to 82nd to the West and East).

⁸ Ex. 2, “Illinois American Water’s Interurban District Announces \$3.1 Million Investment for over Six Miles of Water Main,” River Bender, September 2, 2015, available at <https://www.riverbender.com/articles/details/illinois-american-waters-interurban-district-announces-31-million-investment-for-over-six-miles-of-water-main-8786.cfm>

along South 51st, South 52nd and South 53rd and on West Washington From North Belt to South 51st. - North 31st and Cambridge - over 1,700 feet of 2-inch water main will be replaced with 8-inch water main on North 31st Street from Vernier Avenue and Sheridan Avenue on Sheridan Avenue from North 31st to North 30th Street and on Cambridge Drive in its entirety.”

- In IAW’s 2016 rate case where the utility asked the ICC for a significant increase due to infrastructure costs, IAW listed several main replacement projects in its accounting of “significant” capital projects (> \$1 million). These included a \$6.25 million main replacement project on Front St. south of the East St. Louis water treatment plant in conjunction with reconstruction of Front St. and a \$2 million main replacement project at “Washington/Westmoreland” due to a history of breaks and leakage, each replacing roughly 5,000 linear feet of main. A news article on the rate case identifies \$88 million in infrastructure spending on the Interurban system between October 2013 (after IAW’s last rate case) and December 2017, which includes replacing “more than 45 miles of water main” (including the two significant projects noted above).⁹
- In June 2018, IAW promoted its plan to spend \$5.6 million to upgrade the Interurban distribution system, including “replacing and installing over six miles of water main across the southern Illinois service area, including Granite City, Belleville, and East St. Louis.”¹⁰ Granite City is over 90% white, with a median household income of nearly \$44,000 per year.

Because the limited publicly available data reports upgrades predominantly in portions of the Interurban System with higher home values, higher incomes, and whiter populations than Centreville, we are concerned about the possibility of inequitable service. It is unclear to us whether the state of the mains in these communities is more dire than that of the mains in Centreville, as we only have main break data for Centreville itself provided by IAW to the Illinois EPA. Accordingly, we request that the ICC require reporting of additional data on the locations and frequencies of main breaks and other issues with distributed infrastructure within

⁹ Ex. 3, “Illinois American Water files rate increase request,” Illinois Business Journal, January 22, 2016, available at <https://www.ibjonline.com/2016/01/22/illinois-american-water-files-rate-increase-request/>. The \$88 million invested in Interurban System “includes replacing and installing fire hydrants, valves, meters and more than 45 miles of water main. The investment also includes significant electrical upgrades at the East St. Louis Water Treatment Plant for new control valves, a new 2.25-megawatt generator and updated power distribution switchgear to ensure reliability. Critical electrical and SCADA monitoring systems will also be upgraded. Overhead electrical lines distributing power to remote parts of the plant will be replaced with underground lines to ensure safety and reliability.

At both the East St. Louis and Granite City water treatment plants, the raw water intake piping systems were upgraded to ensure reliability. A new 1 million gallon elevated storage tank in East St. Louis will provide storage and enhanced water pressure to customers. In addition, a new raw water pretreatment facility is being constructed to remove sand and other heavy debris from the river water. This will enhance the operational efficiency of the treatment process and reduce wear and tear on mechanical equipment.”

¹⁰ Ex. 4, “Illinois American Water plans upgrades in Granite City,” Illinois Suburban Journals, June 7, 2018, available at https://www.stltoday.com/suburban-journals/illinois/illinois-american-water-plans-upgrades-in-granite-city/article_478dd17c-a901-50d6-8f2d-8eb8c5a3fad3.html.

regulated utilities' service areas, as well as of repairs, replacements and upgrades in distributed infrastructure.

Request for Collection of Information to Ensure Equity and Nondiscrimination in Transmission, Distribution and Collection Water Infrastructure. Increased reporting on the state of distributed infrastructure and regulated utilities' plans for investing in it, as well as methods for assessing this data and other metrics going to variation in service delivery among communities, are critical to ensuring equitable and nondiscriminatory service delivery. Whether IAW in fact is fixing/replacing mains more readily in communities that are whiter and have higher median incomes than in underserved communities of color like Centreville – or conversely is meeting its duties of equity and nondiscrimination by ensuring that transmission and distribution systems in communities like Centreville are being made whole on par with other communities – in our experience can only be surmised on the basis of information currently available to the public. This information consists of narrative descriptions such as those quoted above and very limited, aggregated data.¹¹ Regarding the latter, it appears that while regulated drinking water utilities are required to include in their annual reports some data on transmission and distribution mains, that data is reported at the system or district level, which is too general to gauge distributive equity in condition of/work on mains within water and across water systems.¹²

Thus, we are requesting that the ICC require regulated water utilities to include additional information in their annual reports on the geographic distribution of water main breaks and other types of system/service deficiencies, as well as their work to maintain, repair and/or replace distributed water infrastructure. Data on condition of distributed infrastructure and investments in repairs/replacement should be provided in mapping format, along with an accounting of future plans for repair/replacement projects on distributed infrastructure and amount of investment, including information on location of such projects. This information could be provided at the census block level, such that it can be compared to demographic data available from the Census. In addition to the data itself, the ICC should consider working with stakeholders, including local community residents served by regulated utilities who have experienced significant service disruptions and potentially inequitable service, to develop methods for analyzing the data and other means for determining whether distributed water infrastructure is in fact being maintained in an equitable and nondiscriminatory manner.

Along with the ICC's authority and duty to ensure that services are delivered in an equitable and nondiscriminatory manner as noted above, the ICC also has the broad authority to request and

¹¹ We acknowledge that more detailed information may be available in some format for some companies; however, the fact that we could not locate such information through a concerted search supports the need to require systematic reporting and public disclosure of the data.

¹² See, e.g., Annual Report of Water and/or Sewer Utilities to the Illinois Commerce Commission, Form 22 ILCC, Illinois-American Water Company, December 31, 2018, at 20W.

receive from utilities “all information required ... to carry into effect the provisions of this Act,” including in the form of an annual report.¹³

Conclusion. In sum, both the ICC and regulated water utilities have duties to ensure equitable and nondiscriminatory service delivery, which would be served by the agency requiring reporting of more granular information on the state of each system’s distributed infrastructure and the utility’s plans for investing in it. We thank the agency for its inquiry into these critical issues and look forward to working together to ensure that all customers of the state’s water utilities enjoy equitable water services.

Sincerely,

Meleah Geertsma
Natalia Ospina
Natural Resources Defense Council
mgeertsma@nrdc.org

Nicole Nelson
Equity Legal Services
nnelson@equitylegalservices.org

Kalila Jackson
Metropolitan St. Louis Equality Housing Council
kjackson@ehoc-stl.org

Debbie Chizewer
Anna Sewell
Mary Rock
Earthjustice
dchizewer@earthjustice.org

¹³ See 220 ILCS 5/5-101, 5-109, and the remainder of Section 5.